

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN BRONSINK, Guardian and Conservator of
the Estate of HENRIETTA G. DENBRABER
FEENSTRA, L.I.P.,

Appellee,

and

UNPUBLISHED
October 19, 1999

MARY J. GEIBEL and MARVA G. JANSONS,

Petitioners-Appellees,

No. 214771
Kent Probate Court
LC No. 97-164788 GD

v

LELAND FEENSTRA,

Respondent-Appellant.

Before: Hood, P.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

Respondent appeals as of right the probate court order granting petitioners' request to retain an independent conservator and to divide the corpus of a revocable living trust with half of the trust assets to be assigned to the conservator for the care and benefit of the ward in this matter, Henrietta Feenstra. We affirm.

Henrietta Feenstra and respondent Leland Feenstra were married in 1983. This was a second marriage for both and each brought assets to the marriage that were combined in a revocable living trust agreement. Henrietta was diagnosed with Parkinson's disease in 1995 and was ultimately declared incompetent in 1997. Henrietta's daughter, Willyenne Steele, began to care for Henrietta in her home. Following increasing conflict with respondent and his desire to care for Henrietta in his home, Willyenne and her two sisters, petitioners Mary Geibel and Marva Jansons, filed a petition seeking to be named conservators and requesting that sufficient funds be released for Henrietta's care.

Before the hearing on the petition, the parties reached an agreement. The agreement included the appointment of a third-party guardian and conservator who could access Henrietta's pension and social security benefits. The conservator thereafter determined that the expenses for Henrietta's care exceeded the income available to him under the agreement. The conservator was unable, however, to negotiate a new agreement with respondent.

Petitioners filed a new petition seeking to modify the original agreement by splitting the trust so that the necessary funds could be used for Henrietta's care and benefit. Respondent filed a response and counter-petition seeking to have himself appointed guardian/conservator. After a two-day formal hearing, the probate court determined that the conservator should continue in his position and that the corpus of the revocable living trust should be divided, with half of the trust assets being assigned to the conservator for the care and benefit of Henrietta. In so holding, the probate judge summed up the testimony as follows:

It seems to me that every time and every professional and every family member who's talked about the care Mrs. Feenstra's gotten at her daughter's house, the word excellent is used. And the —and the word adequate is used at the home of—that she shares with her husband when she's there.

Respondent first argues that, absent a finding by the probate court that respondent violated his fiduciary duty, the probate court did not have the power to deviate from the express terms of the trust. However, the probate court never considered the issue of whether respondent violated any fiduciary duties with respect to the trust. Rather, the probate court found that respondent's refusal to provide adequate funds for Henrietta's care resulted in diminution of Henrietta's quality of care. Thus, the issue presented is whether the probate court can authorize a conservator to handle the funds of a protected person's self-trusted revocable living trust for the benefit of the protected person.

MCL 700.468; MSA 27.5468 authorizes a probate court to exercise specific powers, either directly or through a conservator, with respect to the estate and affairs of protected persons under certain circumstances. In pertinent part, § 468(1)(c) provides:

After a hearing, and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, *the court, for the benefit of the person and members of the person's household, has all the powers over the person's estate and affairs which the person could exercise if present and not under disability, except the power to make a will.* These powers include the power to make gifts, to convey or release contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, *to exercise or release powers as trustee . . .* [emphasis added.]

Henrietta Feenstra, as settlor and co-trustee of the joint revocable living trust, had the right to change the terms of the trust and/or remove assets from the trust during her lifetime. Following the determination that Henrietta was no longer competent, the probate court was within its power to

exercise her rights under the trust for her benefit. The probate court found that funds in excess of Henrietta's pension and social security were needed for her care and vested her one-half interest in the trust assets in her conservator.

The Revised Probate Code clearly contemplates that a conservator may be authorized to hold all of the protected assets as fiduciary. MCL 700.480; MSA 27.5480 provides in pertinent part:

The appointment of a conservator vests in the conservator title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact.

MCL 700.484; MSA 27.5484 and MCL 700.485; MSA 27.5485 set forth the specific powers granted to a conservator to manage and expend funds for the benefit of the protected person. The powers granted by §§ 484 and 485 may be conferred by the probate court at the time of appointment of the conservator or later pursuant to MCL 700.486; MSA 27.5486. Accordingly, the probate court was within its statutory authority to allow the limitations on the power of the conservator under the original agreement and then to expand those powers pursuant to petitioners' petition based on the increased need demonstrated by the testimony taken in the hearing on the issue.

Respondent next argues that the probate court erred by failing to follow the priority statute, which favors the appointment of a spouse as conservator. MCL 700.470(1)(c); MSA 27.5470(1)(c). Respondent fails to note, however, that MCL 700.470(2); MSA 27.5470(2) also provides that "The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority." Here, after hearing testimony of many people and reviewing the recommendations contained in two guardian ad litem reports, the probate judge made the good cause determination that Henrietta would receive the best care if the independent conservator remained in his position. The probate judge is in the best position to make this determination, and after reviewing the record we find no clear error in this finding. *In re Williams Estate*, 133 Mich App 1, 13; 349 NW2d 247 (1984).

Affirmed.

/s/ Harold Hood
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald